

STATE OF MICHIGAN
COURT OF APPEALS

BRITTEN STRINGWELL,

Plaintiff-Appellee,

v

ANN ARBOR PUBLIC SCHOOLS,

Defendant-Appellant.

UNPUBLISHED

August 15, 2006

No. 264252

Washtenaw Circuit Court

LC No. 02-000343-NI

Before: Borrello, P.J., and Saad and Wilder, JJ.

BORRELLO, P.J. (*dissenting*).

This case presents myriad legal issues and potential factual disputes which my brother jurists have presented in their majority opinion. While I find myself in agreement with most of their legal conclusions, because I find that a question of fact exists regarding whether the alleged driver was defendant's common law agent, I must respectfully dissent. Although I concur with the majority that plaintiff has built much of his case on speculation, there is some evidence, albeit marginal, that the teacher's action of directing the student to undertake the actions necessary to check the fluid levels could have caused the events that occurred thereafter and support a jury determining that the student had operated the vehicle within the meaning of the motor vehicle exception, MCL 691.1405. Such a question of fact is sufficient to allow a jury to decide whether the teacher's direction to the student created a common law agency.

I would also hold that the student's conduct of starting a motor vehicle constitutes the operation of a motor vehicle as defined by the motor vehicle exception. My decision here is directed by the common sense notion that any operation of a motor vehicle begins by starting the vehicle; hence the act of starting a motor vehicle begins the operation of that vehicle. At a minimum, starting the motor vehicle creates a jury question regarding whether the vehicle was being operated.

For these reasons, I respectfully dissent from the decision of my brother jurists and would affirm the decision of the trial court for the same reasons set forth in its opinion.

/s/ Stephen L. Borrello